

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3831 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION
Versus

Legal Heirs of late MUSTUFA ABDULLA PANAGAR.

Appearance:

MR HARDIK C RAWAL for Petitioner.

..... for Respondent No. 1

MR MUKESH H RATHOD for Respondents No. 1/1-1/5

CORAM : MR.JUSTICE K.A.PUJ

Date of decision: 20/03/2002

ORAL JUDGEMENT

The petitioner, Gujarat State Road Transport Corporation, Ahmedabad, has challenged in this petition under Article 227 of the Constitution of India the order dated 20th December 1988 and the award dated 22nd November 1989 passed by the Special Labour Court, Ahmedabad, in Reference (LC-ID & T) No. 1178/84 and has

further prayed for setting aside and quashing of the said awards.

2. The petitioner has also prayed for an interim relief staying the execution and implementation of the above referred orders. This Court, while issuing the Rule on 8-4-1992 has granted interim relief by giving direction that there shall be no stay against the directions of reinstatement. However, as regards the payment of backwages, the petitioner Corporation would be at liberty to retain 50% of the amount of backwages on condition that in case the petitioner loses in the petition the petitioner shall pay the same to the workman with 15% interest. The balance 50% of the amount of backwages would be paid to the workman on or before June 30, 1992. It is submitted by the ld. advocate, Mr. Hardik Raval for the petitioner that the 50% of the amount of backwages was deposited by the petitioner pursuant to the directions of this Hon'ble Court.

3. The brief facts, giving rise to the present petition, are that the respondent No.1, namely, Shri Mustufa Abdulla Panagar who expired on 29.6.99, and whose legal heirs were brought on record on 14.9.2001, was serving as a driver in the petitioner-Corporation and in course of his duties on 17th October 1980 when he was plying bus No. GRS-6892, near Unjha Cross Roads, he met with an accident with a diesel tanker causing damage to the bus as well as passengers travelling in the bus. This had also resulted into injuries to the conductor and to the helpers.

4. As a consequence to the said accident, a departmental inquiry was instituted against the deceased respondent and chargesheet dated 10th July 1991 was served upon him. The said chargesheet was also followed by letters dated 24th July 1981, 12th August 1981 and 3rd October 1981, by Registered post. However, the inquiry proceeded exparte as the respondent did not remain present at the inquiry. The inquiry officer found the deceased-respondent guilty of the charges vide his inquiry report annexed at Exh.B to the petition.

5. That the show cause notice dated 21st October 1981 was issued on the deceased-respondent directing him to show cause as to why penalty should not be imposed upon him. This was the second show cause notice and yet the deceased-respondent did not remain present and the communications addressed to him were returned unserved as the delinquent had left the country. All the letters sent to the deceased-respondent were returned bearing the

postal endorsement that the addressee refused to accept the same. The petitioner came to know that the deceased-respondent had gone to UAE without informing the petitioner. Subsequently, the petitioner's brother wrote a letter dated 23rd January 1981 to the petitioner-Corporation and requested to grant leave for a period from 22nd December 1980 to 21st November 1981 as the respondent had gone to Jidra. The said application was rejected by the petitioner-Corporation and the deceased-respondent's brother was informed accordingly.

6. The petitioner has further stated that subsequently, in the year 1984 at the instance of the deceased-respondent the Union sought a reference being Ref. (LC-IDAT) No. 1178/84 before the Special Labour Court, Ahmedabad and the Labour Court by its order dated 20th December 1988 held that the inquiry was not proper and gave an opportunity to both the parties to lead evidence. Subsequently, the Labour Court had passed a further order holding that the respondent-delinquent was not guilty and directed his reinstatement with full backwages. The said two awards are under challenge in this petition filed by the petitioner Corporation before this Court.

7. The petitioner further submitted that the Labour Court was not right in law in holding that the departmental inquiry was not valid. It is further submitted that the workman was informed by Registered Post at the address registered with the office and it was also established that the workman was during this period, out of India. The petitioner further submitted that the reasoning of the Labour Court that the chargesheet was required to be published in the newspaper is not at all justified as it was a domestic inquiry against an employee and the employee was duty bound to attend the office. It was further submitted that the deceased-respondent was not suspended from service and he has not supplied any other address for communication and his absence from duty was totally unauthorised. It was, therefore, submitted that since the deceased-respondent was not attending to duties and he was away from India, there was no reason as to why the inquiry should not be permitted to be proceeded with. There was no injustice or prejudice caused to the workman. It was, therefore, submitted that the deceased-respondent having not participated in the inquiry, the Labour Court was not right in law in holding that the inquiry was vitiated.

8. The petitioner has further submitted that before the Inquiry Officer evidence in the nature of panchnama,

map and the statement of the reporter was available. It was shown in the panchnama that the deceased-respondent was not careful in driving the bus and that he was responsible for the accident. It was further submitted that as a driver of the public vehicle he did not observe the care expected of him. The statement of the driver, conductor and the passengers were recorded and in this view of the matter, the entire reasoning of the Labour Court was not justified as contended by the petitioner.

9. The petitioner has further submitted that the order of dismissal from service was passed on 5th November 1981 while the Reference was sought in 1984. It is, therefore, submitted that the Labour Court was not justified in law in granting backwages from the date of dismissal till the filing of Reference Application before the Labour Court.

10. Mr. Hardik Raval, the learned advocate for the petitioner has submitted that at the time of admission of this petition, no stay was granted by this Court against the reinstatement. However, order was passed to the effect of retention of 50% of backwages with the condition that in case the petitioner loses in this petition the said amount would be repaid to the respondent with 15% backwages. Pursuant to the order of the Labour Court, the respondent was reinstated in the petitioner-Corporation and he served on the said post. After his death, his legal heirs were brought on record and they are pursuing the present petition before this Court. It is submitted that looking to the conduct of the deceased-respondent and his absence from service during the period of inquiry and even thereafter, the 100% backwages awarded by the Labour Court is not justified at all. The deceased-respondent has not only avoided the inquiry but he had also remained away from his duty and gone abroad without sending any intimation to the petitioner-Corporation. The petitioner Corporation was deprived of his services for all this period and the petitioner might have earned at abroad. Not only this, the Corporation had to bear the compensation which was to be awarded to the persons injured as a result of the accident taken place because of the negligence shown by the deceased-respondent while driving the bus. Looking to all these circumstances, the 100% backwages awarded by the Labour Court is not justified at all.

11. Having regard to the facts and circumstances of the case, and considering the pleadings and also having gone through the two awards under challenge, I am of the

view that the interest of justice would be served if the Labour Court's award is modified to the extent of granting 50% backwages instead of 100% backwages awarded by the Labour Court. Even while granting stay against the execution of the award, this Court has also permitted the petitioner-Corporation to retain 50% backwages. Since the respondent has expired, there is no justification to recover any amount from the legal heirs of the respondent even if the award is being modified by reducing the amount of backwages to less than 50%. Taking overall view of the matter, I hold that the deceased-respodnent was entitled to backwages only by the extent of 50% and since that amount has already been paid by the petitioner-Corporation, there is no need to pass any further order directing the Corporation to pay any more amount. The Labour Court's award is modified to the above extent. This petition is, therefore, partly allowed. Rule is made absolute to the above extent with no order as to costs.

rmr. [K.A. Puj, J.]